

EXHIBIT 3-H

SAMPLE SUPPLEMENTAL CONDITIONS TO STANDARD ARCHITECTURAL AND/OR ENGINEERING CONTRACTS

The contract clauses below that are marked with an asterisk [*] are required in all TSEP-funded Architect and/or Engineer contracts. If not included within the contract, they must be added as a supplement to the contract.

The following Supplemental Conditions are hereby made a part of the contract to which they are appended supplementing that contract and superseding any of its articles of which they are in conflict.

1. LIAISON. The (City's/Town's/County's/District's) designated liaison with the Architect and/or Engineer is _____. The Architect and/or Engineer's designated liaison with the _____ (City/Town/County/District) _____ is _____.
- *2. INDEPENDENT CONTRACTOR. It is understood by the parties hereto that the Architect and/or Engineer is an independent contractor and as such neither it nor its employees, if any, are employees of the _____ (City/Town/County/District) _____ for purposes of tax, retirement system, or social security (FICA) withholding. It is further understood that pursuant to section 39-71-401, MCA, the Architect and/or Engineer has obtained, and will maintain at its expense for the duration of this Contract, coverage in a workers' compensation plan for its principals and employees for the services to be performed hereunder.
3. MODIFICATION AND ASSIGNABILITY OF CONTRACT. This Contract contains the entire agreement between the parties, and no statements, promises, or inducements made by either party, or agents of either party, which are not contained in the written Contract, are valid or binding. This Contract may not be enlarged, modified or altered except upon written agreement signed by both parties hereto. The Architect and/or Engineer may not subcontract or assign its rights (including the right to compensation) or duties arising hereunder without the prior written consent of the (City/Town/County/District). Any subcontract or assignee will be bound by the terms and conditions of this contract.
- *4. EFFECTIVE DATE AND TIME OF PERFORMANCE. This Contract takes effect on _____. The services to be performed by the Contractor will be completed no later than _____.

- *5. COMPENSATION. For the satisfactory completion of the services to be provided under this Contract, the (City/Town/County/District) will pay the Architect and/or Engineer a sum not to exceed \$_____ as in the manner set forth in the attached Exhibit _____, which by this reference is made a part of this contract. Each specific service the Architect and/or Engineer will provide under this contract, and the maximum amount that the (City/Town/County/District) will pay the Architect and/or Engineer for each of these services, is set forth in the attached Exhibit _____. The amount to be paid will be calculated according to the hourly billing rates for the various personnel as described in Exhibit _____. The Architect and/or Engineer may submit monthly requests for payment, based on actual work performed, which must be accompanied by an itemized invoice describing the services furnished, the number of hours worked to accomplish each item, the amount being billed for each item, a description of any other eligible expenses incurred during the billing period, and the total amount being billed.
- *6. SCOPE OF SERVICES. The Architect and/or Engineer will perform the following services:
- (Here, or in an exhibit to the contract, explicitly and completely list the services and products the grant recipient expects of the Architect and/or Engineer, including the timetable for completion of key tasks. Consult with your TSEP liaison as to the specific services that may be appropriate for each grant category.)
- It is understood and agreed by the parties that the services of the Architect and/or Engineer do not include any of the following: the disbursement or accounting of funds distributed by the (City's/Town's/County's/District's) financial officer, legal advice, fiscal audits or assistance with activities not related to the TSEP project.
7. PRECONSTRUCTION CONFERENCE. After the construction contract(s) for the project contemplated by this Contract have been awarded, but before the start of construction, a conference will be held for the purpose of familiarizing the successful bidder with the federal and State requirements which apply to projects funded in whole or in part through the Treasure State Endowment Program (TSEP). Additionally, discussions will take place on such matters as project supervision, coordination with city or county officials, on-site inspections, progress schedules and reports, payrolls, payments to contractors, contract change orders, insurance, safety and other items pertinent to the project. The Architect and/or Engineer may be responsible for conducting this conference.
8. CONDITIONAL AGREEMENT. It is expressly understood by the parties hereto that this Contract is dependent and conditioned upon the receipt by the (City/Town/County/District) of TSEP funds from the Department and that in the event that said funds are not provided, the (City/Town/County/District) incurs no responsibilities or liabilities under this Contract.

*9. TERMINATION OF CONTRACT. This Contract may be terminated as follows:

- (a) Termination due to loss of funding. This Contract will terminate, in whole or in part, at the discretion of the (City/Town/County/District) in the event that the Department reduces or terminates payments under TSEP so as to prevent the (City/Town/County/District) from paying the Architect and/or Engineer with TSEP funds. In this event, the (City/Town/County/District) will give the Architect and/or Engineer advance written notice which sets forth the effective date of the termination and explain that the termination is due to a loss or reduction of the TSEP grant.
- (b) Termination for cause.
 - (i) If the (City/Town/County/District) determines that the Architect and/or Engineer has failed to comply with the terms and conditions of the Contract, it may terminate this Contract in whole or in part at any time before the date of completion. If the Architect and/or Engineer fails to comply with any of the terms and conditions of this Contract, the (City/Town/County/District) may give notice, in writing, to the Architect and/or Engineer of any or all deficiencies claimed. The notice will be sufficient for all purposes if it describes the default in general terms. If all defaults are not cured and corrected within a reasonable period to be specified in the notice, (City/Town/County/District) may, with no further notice, declare this Contract to be terminated. The Architect and/or Engineer will thereafter be entitled to receive payment for those services reasonably performed to the date of termination less the amount of reasonable damages suffered by the (City/Town/County/District) by reason of the Architect and/or Engineer's failure to comply with this Contract.
 - (ii) Notwithstanding the above, the Architect and/or Engineer is not relieved of liability to the (City/Town/County/District) for damages sustained by the (City/Town/County/District) by virtue of any breach of this Contract by the Architect and/or Engineer, and the (City/Town/County/District) may withhold any payments to the Architect and/or Engineer for the purpose of setoff until such time as the exact amount of damages due the (City/Town/County/District) from the Architect and/or Engineer is determined.

*10. CONFLICT OF INTEREST. The Architect and/or Engineer covenants that it presently has no interest and will not acquire any interest, direct or indirect, in the TSEP project which would conflict in any manner or degree with the performance of its services hereunder. The Architect and/or Engineer further covenants that, in the

- performing this Contract, it will employ no person who has any such interest.
- *11. NONDISCRIMINATION. The Architect and/or Engineer will not discriminate against any employee or applicant for employment on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.
- *12. OWNERSHIP AND PUBLICATION OF MATERIALS. All reports, information, data, and other materials prepared by the Architect and/or Engineer pursuant to this Contract are to be the property of the (City/Town/County) and the Montana Department of Commerce which have exclusive and unrestricted authority to release, publish or otherwise use, in whole or part, information relating thereto. Any reuse without written verification or adaptation by the Architect and/or Engineer for the specific purpose intended will be at the Owner's sole risk and without liability or legal exposure to the Architect and/or Engineer. No material produced in whole or part under this Contract shall be subject to copyright or patent in the United States or in any other country without the prior written permission of the (City/Town/County/District) and the Montana Department of Commerce.
- *13. REPORTS AND INFORMATION. The Architect and/or Engineer will maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to this Contract and such other records as may be deemed necessary by the (City/Town/County/District) to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the (City/Town/County/District) or its authorized representative, and will be retained for five years after the expiration of this Contract unless permission to destroy them is granted by the (City/Town/County/District).
- *14. ACCESS TO RECORDS. It is expressly understood that the Architect and/or Engineer's records relating to this Contract will be available during normal business hours for inspection by the (City/Town/County/District), the Department, and, when required by law, the Montana Legislative Auditor.
- *15. CONSTRUCTION AND VENUE. This Contract will be construed under and governed by the laws of the State of Montana. In the event of litigation concerning it, venue is the _____ Judicial District in and for the County of _____, State of Montana.
16. INDEMNIFICATION. The Architect and/or Engineer waives any and all claims and recourse against the (City/Town/County/District), including the right of contribution for loss and damage to persons or property arising from, growing out of, or in any way connected with or incident to the Architect and/or Engineer's performance of this contract except for liability arising out of concurrent or sole negligence of the (City/Town/County) or its officers, agents or employees. Further, the Architect

and/or Engineer will indemnify, hold harmless, and defend the (City/Town/County/District) against any and all claims, demands, damages, costs, expenses or liability arising out of the Architect and/or Engineer's performance of this Contract except for liability arising out of the concurrent or sole negligence of the (City/Town/County) or its officers, agents or employees.

17. **LEGAL FEES.** In the event either party incurs legal expenses to enforce the terms and conditions of this Contract, the prevailing party is entitled to recover reasonable attorney's fees and other costs and expenses, whether the same are incurred with or without suit.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the _____ day of _____.

ARCHITECT/ENGINEER

CITY/TOWN/COUNTY/DISTRICT
OF _____

BY:

BY:

Architect/Engineer

Official Representative of the
(City/Town/County/District)

DATE: _____

TITLE: _____

DATE: _____